

1 IN THE CIRCUIT COURT OF THE STATE OF OREGON
2 FOR THE COUNTY OF MULTNOMAH

3 TAMARA ELISE RUBIN, ALEXANDER
4 JOSEPH RUBIN, DAVID BENJAMIN
5 RUBIN, CHARLIE PARKER ELIZER
6 RUBIN, COLESCOTT JAMES BARRY
7 RUBIN, and LEONARD BYER RUBIN,

8 Plaintiffs,

9 v.

10 THE OREGON DEPARTMENT OF
11 JUSTICE, THE OREGON
12 DEPARTMENT OF HUMAN
13 SERVICES, THE MULTNOMAH
14 COUNTY SHERIFF'S OFFICE, AND
15 THE MULTNOMAH COUNTY
16 DISTRICT ATTORNEY, OREGON
17 GOVERNOR KATE BROWN, in her
18 official and individual capacity, OREGON
19 ATTORNEY GENERAL ELLEN
20 ROSENBLUM, in her official and
21 individual capacity, KRIS KALANGES, in
22 his official and individual capacity, ELLEN
23 MENDOZA, in her official and individual
24 capacity, KAREN ERTEL, in her official
25 and individual capacity, SAM
26 LEINEWEBER, in his official and
27 individual capacity, MICHAEL GLENN, in
28 his official and individual capacity, MARK
KLEYNA, in his official and individual
capacity, and JOHN/JANE DOE,

Defendants.

Case No. **19CV20933**

COMPLAINT

Civil Rights – 42 USC § 1983 – First
Amendment, Fourth Amendment, and
Fourteenth Amendment; Malicious
Prosecution; Abuse of Process; Intentional
Infliction of Emotional Distress; and
Defamation

Claims total: \$15,615,000
[ORS 21.160(1)(c)]

CLAIM NOT SUBJECT TO MANDATORY
ARBITRATION

DEMAND FOR JURY TRIAL

1 Plaintiff alleges:

2 **INTRODUCTION**

3 1.

4 Plaintiff, Tamara Elise Rubin, brings this case against the Oregon Department of Justice,
5 the Oregon Department of Human Services, the Multnomah County Sheriff's Office, the
6 Multnomah County District Attorney's Office, Oregon Governor Kate Brown, Oregon Attorney
7 General Ellen Rosenblum, Kris Kalanges, Ellen Mendoza, Karen Ertel, Sam Leineweber,
8 Michael Glenn, Mark Kleyna, and (Jane or John) Doe, for alleged violations pursuant to 42 USC
9 § 1983, and the deprivation of Plaintiff's rights guaranteed to her by the First, Fourth and
10 Fourteenth Amendments to the United States Constitution, as well as for malicious prosecution,
11 abuse of process, intentional infliction of emotional distress, and defamation.
12

13 **JURISDICTION**

14 2.

15 This Court has jurisdiction over the subject matter of this civil action pursuant to ORCP 4.
16

17 **PARTIES & VENUE**

18 3.

19 At all material times Tamara Elise Rubin ("Plaintiff") is an individual residing in
20 Multnomah County, in the State of Oregon. Plaintiff is a vocal and well-known activist for
21 childhood lead poisoning prevention, and from 2011 through 2016 was the Executive
22 Director of the non-profit Lead Safe America Foundation (LSAF).
23

24 4.

25 Ellen Mendoza resides in Multnomah County, in the State of Oregon. At all times
26 material herein, she was employed as a Sr. Asst. Attorney General for the Oregon Department of
27
28

1 Justice, and the General Counsel for Oregon's Health and Human Services agencies, which
2 entailed advising those agencies, representing those agencies in administrative hearings, and
3 rulemaking for those agencies. She is being sued in her official and individual capacity.
4

5. 5

6 Kris Kalanges resides in Multnomah County, in the State of Oregon. At all times
7 material herein, he was employed as a Financial Investigator in the Charitable Activities
8 Section of the Oregon Department of Justice. The Charitable Activities section supervises and
9 regulates the activities of charitable organizations in the state. He is being sued in his official
10 and individual capacity.
11

6. 12

13 Karen Ertel resides in Multnomah County, in the State of Oregon. At all times material
14 herein, she was employed as an Investigator with the Oregon Department of Human Services.
15 She is being sued in her official and individual capacity.
16

7. 17

18 Sam Leineweber resides in Clackamas County, in the State of Oregon. At all times
19 material herein, he was employed as an Assistant District Attorney with the Multnomah County
20 District Attorneys Office. He is being sued in his official and individual capacity.
21

8. 22

23 Michael Glenn resides in Washington County, in the State of Oregon. At all times
24 material herein, he was employed as a Criminal Fraud Investigator for the Oregon Department of
25 Human Services. He is being sued in his official and individual capacity.
26
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1
2 9.

3 Mark Kleyrna resides in Multnomah County, in the State of Oregon. At all times material
4 herein, he was employed as an Assistant Attorney General for the Oregon Department of Justice.
5 He is being sued in his official and individual capacity.
6

7 9.a.

8 Ellen Rosenblum resides in Multnomah County, in the State of Oregon. At all times
9 material herein, she was employed as Attorney General for the State of Oregon. Given her role in
10 leading the Oregon Department of Justice (and being thus in charge of/having responsibility for
11 overseeing the actions of others working within the DOJ) she is being sued in her official and
12 individual capacity.
13

14 9.b.

15 Kate Brown resides in Marion County, in the State of Oregon. At all times material
16 herein, she was employed as Governor for the State of Oregon. Given her role to serve and act in
17 the interest of the people of the State of Oregon in oversight of State executive leaders (including
18 the Oregon Attorney General and Oregon Department of Justice) and her responsibility to protect
19 the people of Oregon from corruption within State agencies, misuse of State funds and misuse of
20 the power of State agencies in regards to their interactions with the citizens of the State of
21 Oregon, she is being sued in her official and individual capacity.
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2 10.

3 Defendant named herein as JOHN or JANE DOE, is the unknown individual who made
4 an “anonymous” tip to the Oregon Department of Justice that sparked its investigation and the
5 subsequent proceedings emanating from this person’s false allegations. He or she is being sued
6 in any related official capacities and in their individual capacity.
7

8 11.

9 Defendants the Oregon Department of Justice (DOJ) and the Oregon Department of
10 Human Services (DHS) are located in Marion County, in the State of Oregon.
11

12 12.

13 The Multnomah County Sheriff’s Office and the Multnomah County District Attorney
14 are located in Multnomah, County, Oregon.
15

16 13.

17 Plaintiff has four sons – currently age 22, 16, 14 and 10. Plaintiff’s two middle sons
18 (Alexander Rubin and David “Avi” Rubin) were diagnosed with lead poisoning in 2005.
19

20 14.

21 The poisoning of her sons prompted Plaintiff to educate other families around the world
22 about the dangers and hazards of lead poisoning.
23

24 15.

25 In 2007, Plaintiff began speaking at conferences and participating in and coordinating
26 collaborative lead-poisoning prevention outreach events in Oregon and around the country. And
27 Plaintiff appeared on the cover of USA Today in an interview focused on her lead poisoning
28 prevention advocacy work.

16.

July 15, 2008, Plaintiff appeared on the Today show because of her collaborative work with the National Center for Healthy Housing to help increase awareness of the new federal EPA RRP Rule mandating lead-safe work practices in the renovation, repair and painting of pre-1978 homes.

17.

From 2008 through 2010 Plaintiff testified before the Oregon legislature and senate in support of the Oregon State implementation of the EPA RRP Rule. In 2009 Plaintiff became certified in using an X-Ray Fluorescence spectrometer to test consumer goods for Lead and other toxicants.

18.

In 2010 and 2011, Plaintiff secured bipartisan support for Oregon state legislation she drafted aimed at reducing and eventually eliminating lead hazards in public and private schools and daycares throughout the State of Oregon. This included support from Representative Conger and Representative Tomei.

19.

In March of 2011, Plaintiff founded the 501(c)3 nonprofit Lead Safe America Foundation (LSAF). LSAF provided emergency intervention and support to families across the country whose children had been lead poisoned. LSAF also distributed free LeadCheck lead test kits for parents to test paint and common household items that may contain lead. LSAF also offered free testing of soil and household goods that were sent to them, such as toys, lunch boxes, kids' jewelry, and dishes. LSAF also awarded modest grants to families needing emergency assistance if their children had been poisoned due to lead exposure. LSAF also coordinated and held

1 outreach and education events for lead poisoning prevention (in collaboration with EPA
2 Regional offices, local city and state health departments, hospitals, universities, schools,
3 nonprofit agency partners and corporations) across the country.
4

5 20.

6 Plaintiff's work before founding LSAF and including the work of LSAF led to Plaintiff
7 becoming an internationally-recognized multi-award-winning advocate for childhood lead
8 poisoning prevention and awareness.
9

10 21.

11 Plaintiff expressed her views and opinions on childhood lead poisoning prevention
12 via her social media accounts, her websites (including TamaraRubin.com /
13 LeadSafeMama.com), blogging, interviews with the media—domestic and international—
14 and personal appearances.
15

16 22.

17 In 2015, in a call to action following an interview about her advocacy on a local
18 popular radio program/podcast (via UrbanMamas.com), Plaintiff started a Change.org
19 petition to “Clean up the existing lead (pb) hazards at all pre-1978 Portland Public Schools”,
20 which received over one thousand seven hundred signatures.
21

22 23.

23 Plaintiff was the catalyst that prompted the Portland Public School district to “re-
24 sample fountains at her children’s school” for the presence of lead in 2016.
25

26 24.

27 February 25, 2016, Plaintiff coordinated a lead-poisoning information outreach event
28 for the residents of Flint, Michigan, appearing on stage with Bernie Sanders. During the

1 event, which was internationally televised, she advocated for the community and nation to
2 recognize the role of the lead industry in the crisis, and hold them accountable for their
3 actions. At this event, Plaintiff also announced that her documentary film about lead
4 poisoning, *MisLEAD: America's Secret Epidemic* was in post-production and would “soon
5 be in theaters”.

7 25.

8 On or about March 23, 2016, Plaintiff and LSAF received a Civil Investigative
9 Demand (CID) from the DOJ, informing them that the DOJ was investigating the activities
10 of LSAF and requesting LSAF's financial accounting records.

12 26.

13 These accusations were based on an “anonymous” tip to the DOJ.

14 27.

15 The CID was signed by Mark Kleyna (Defendant Kleyna) and directed that any
16 questions be directed to DOJ Financial Investigator Kris Kalanges (Defendant Kalanges).

18 28.

19 LSAF produced records to the DOJ, including financial records in FileMaker Pro (an
20 enterprise level database software development system owned by Apple Computers), but
21 Defendant Kalanges said that the records in FileMaker Pro were not acceptable and asked
22 that the records be reproduced in QuickBooks.

1
2 29.

3 Before LSAF and/or Plaintiff were able to fully reproduce the requested accounting
4 records in QuickBooks, Defendant Kalanges completed a “Payments To/For Rubins
5 Analysis” (Analysis), “to determine the total dollar amount of payments made either to or
6 for the benefit of Tamara and Leonard Rubin and their family.”
7

8 30.

9 Defendant Kalanges’s Analysis estimated that Plaintiff and her family received
10 approximately \$450,000 from LSAF between 2011 and 2016.
11

12 31.

13 Defendant Kalanges lacked or failed to review or request documents that would
14 identify, categorize, or substantiate the nature of LSAF transactions, e.g., whether they were
15 cost reimbursements, principal loan repayments, or compensation.
16

17 32.

18 Defendant Kalanges Analysis was unsubstantiated and misleading because it
19 assigned income to Plaintiff and her family that they did not enjoy.
20

21 33.

22 Defendant Kalanges sent this unsubstantiated and misleading Analysis to DHS
23 Criminal Fraud Investigator Michael Glenn (Defendant Glenn), and to the Internal Revenue
24 Service (IRS).
25

26 34.

27 In April 2016, Plaintiff was the opening speaker for a presentation by Erin
28 Brockovich in Portland, Oregon.

1 35.

2 On or about June 13, 2016, Defendant Glenn opened and started a joint
3 administrative DHS investigation based on his review of “a completed investigation report
4 from Kris A. Kalanges who is a Financial Investigator for the Department of Justice
5 Charitable Activities Section that showed DHS Client Tamara Elise Rubin and her husband
6 Leonard Rubin, between 2011 and 2016 have received payments to or for the benefit of
7 themselves an amount of approximately \$450,248.13 from Lead Safe America.”
8

9 36.

10 Neither Defendant Glenn nor anyone else at DHS reviewed or substantiated
11 Defendant Kalanges’ Analysis, but instead they accepted and adopted Kalanges’
12 conclusions that the transactions identified in the Analysis constituted “income” for
13 purposes of calculating Plaintiff and her family’s benefit eligibility determination.
14

15 37.

16 In turn, Defendant DHS incorrectly concluded that Plaintiff’s income made them
17 ineligible for the state benefits they had received from 2011 to 2016.
18

19 38.

20 On or about May 2, 2016, the IRS notified Plaintiff and LSAF that it was auditing
21 LSAF for the 2014 Tax year.
22

23 39.

24 In August 2016, without a vote or the knowledge of LSAF’s Board of Directors,
25 LSAF fired Plaintiff from the organization as its Executive Director.
26
27
28

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2 40.

3 In May 2017, Plaintiff's focus turned to an IRS audit (Audit) of her personal returns
4 for years 2013, 2014, and 2015, that was initiated based on Defendant Kalanges's Analysis
5 and conclusions; that LSAF's financial transactions with Plaintiff were not reflected on
6 Plaintiff's personal tax returns.
7

8 41.

9 Plaintiff was forced to hire a tax attorney and third-party bookkeeper to respond to
10 the Audit.
11

12 42.

13 Plaintiff was able to provide the IRS with the completed LSAF QuickBooks for all
14 years in question, as well as substantiating documentation for the transactions in question.
15

16 43.

17 In June 2017, Plaintiff's blog posts on website (TamaraRubin.com), about her work
18 finding lead in Fidget Spinners went "viral."

19 44.

20 In July 2017, Plaintiff successfully "Kickstarte[d]" her book *I Make Women Cry &*
21 *Throw Out Their Shit*.
22

23 45.

24 In September 2017, Plaintiff received a write-up of her work in WebMD, as
25 #LeadSafeMama.
26
27
28

1
2 46.

3 On or about September 12, 2017, the IRS concluded its full investigative audit, finding in
4 Plaintiff's favor with no changes to Plaintiff's tax liability.
5

6 47.

7 On or about October 5, 2017, Plaintiff provided Defendant DOJ with a letter
8 informing them of the outcome of the IRS audit, along with the IRS letter stating that no
9 changes were made to Plaintiff's tax liability and a letter from Plaintiff's tax attorney
10 summarizing the attorney's communications with the IRS, the meeting with the IRS agent,
11 and the outcome of the audit.
12

13 48.

14 Over the course of the next few weeks, Plaintiff's attorney corresponded with
15 Defendant Kleyna and Defendant Kalanges to make sure they understood the exculpatory
16 nature of the audit and had received all of the more than 2300 pages of substantiating
17 documents that Plaintiff had given the IRS, including the QuickBooks file with all of the
18 relevant LSAF transactions.
19

20 49.

21 On or about November 8, 2017, "CBS This Morning" news covered Plaintiff's work
22 finding lead in fidget spinners. This was Plaintiff's first major national TV news story
23 mentioning the new branding of her work as #LeadSafeMama.
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2 50.

3 On or about, November 8, 2017, Plaintiff confirmed a commitment from a prominent
4 distribution agent for the documentary film she directed and produced (on the subject of
5 childhood lead poisoning), *MisLEAD: America's Secret Epidemic*.
6

7 51.

8 On November 13, 2017, Defendant Kalanges confirmed with Plaintiff's attorney that
9 he had received all of the substantiating records, including the QuickBooks file with all of
10 the relevant LSAF transactions, and that he could access them.
11

12 52.

13 That same day, on November 13, 2017, an Indictment was returned in Multnomah
14 County Case No. 17CR75385, charging Plaintiff with nine (9) Class C felonies: Seven (7)
15 counts of Theft in the First Degree and two (2) counts of welfare fraud.
16

17 53.

18 On or about November 28, 2017, Plaintiff was arrested (and taken away in handcuffs)
19 by deputies from Defendant Multnomah County Sheriff's office, while working on educational
20 activities in her kitchen with her nine year old disabled son. Plaintiff was given no advance
21 notice (by mail or otherwise) that she was being charged with any crime.
22

23 54.

24 Plaintiff hired Celia Howes of HOEVET OLSON HOWES, PC to represent her in the
25 criminal matter on November 28, 2017.
26
27
28

1
2 55.

3 Plaintiff was subsequently booked into the Multnomah County jail and arraigned on
4 November 29, 2017.
5

6 56.

7 Plaintiff learned at the arraignment that Defendant Kalanges had alleged that Plaintiff had
8 embezzled money from LSAF and therefore this disqualified Plaintiff and her family from
9 receiving welfare benefits.
10

11 57.

12 Per the Indictment, Defendant Kalanges and Defendant Glenn were the only two
13 witnesses examined before the Grand Jury.
14

15 58.

16 All of the indicted charges were based on the unsubstantiated and misleading
17 findings of Defendant Kalanges's Analysis, created in June 2016.
18

19 59.

20 Despite being aware that his Analysis was unsubstantiated and misleading,
21 Defendant Kalanges failed to seek reliable information or records from any source that
22 would substantiate, reconcile or confirm his understanding of the nature of the transactions
23 appearing on LSAF's bank statements at that time.
24
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1
2 60.

3 Subsequently, but prior to the issuance of the Indictment, Defendant Kalanges
4 received these substantiating records from LSAF and/or Plaintiff that materially undermined
5 (and fully contradicted) his preliminary assumptions that nearly every transaction flowing
6 from LSAF to Plaintiff was income to or for the benefit of the Plaintiff - including the
7 QuickBooks data Defendant Kalanges had requested.
8

9
10 61.

11 Prior to the issuance of the Indictment, Defendant Kalanges was also informed that
12 his Analysis was inconsistent with the conclusions reached by the IRS after reviewing the
13 additional materials.
14

15 62.

16 On or about December 21, 2017, Defendant Kleyna contacted Plaintiff's attorney
17 Phil Bezanson to request password access to the QuickBooks file, which had been included
18 with the supporting documentation to the IRS audit. This password had previously been
19 provided by Mr. Bezanson to Defendant Kalanges and Defendant Kleyna on November 10,
20 2017. Defendant Kalanges had confirmed receipt of this password via an e-mail to Mr.
21 Bezanson on November 13, 2017.
22

23 63.

24 This request for password access supports the allegation that Defendant Kleyna and
25 Defendant Kalanges had not previously attempted to open these documents even though
26 they were aware that the documents provided the exculpatory evidence in the matter, as
27 determined by the investigative audit conducted by IRS auditor Angie Chapman.
28

64.

On February 8, 2018, Ms. Howes informed assigned Deputy District Attorney Sam Leineweber (Defendant Leineweber), that these exculpatory materials in the possession of the DOJ were not produced by the state in discovery. She also noted her suspicion that Defendant Kalanges had never even looked at (or opened the Quickbooks file of) the exculpatory materials.

65.

Ms. Howe also informed Defendant Leineweber that the charges were based on Defendant Kalanges's unsubstantiated and misleading Analysis, that was rebutted by the IRS audit (the exculpatory materials.)

66.

On February 9, 2018, Plaintiff's attorneys (Ms. Howes & Megan McVicar) met with Defendant Leineweber, Defendant Glenn, and Defendant Kalanges. Plaintiff's attorney confirmed at this meeting, based on questioning by Defendant Leineweber and responsive statements to those questions by Defendant Kalanges, that Defendant Kalanges had withheld the IRS conclusions and the substantiating financial records from DHS and the Multnomah County District Attorney's Office and knew that he had withheld this information. Defendant Kalanges also confirmed in this meeting that he had not yet personally reviewed the exculpatory information he had had in his possession for approximately three months.

Excerpt from 5/6/19 e-mail to Plaintiff from criminal attorney Megan McVicar: "We met with the prosecution team on February 9, 2018. The afternoon before that meeting, Celia and I called Leineweber. Because we knew that Kalanges was going to be at the meeting the next day, we wanted to let Leineweber know that it appeared that Kalanges had

1 the Quickbook information from Phil and knew of the outcome of the IRS audit prior to
2 testifying before the grand jury. It is our recollection that Kalanges had not reviewed the
3 Quickbooks/IRS audit documents or provided these to the DA/DHS prior to that meeting.
4 Based on the notes from the meeting, he said he had never spoken with the DHS analyst.”
5

6
7 67.

8 On May 10, 2018—over three months after Defendant Leineweber had sufficient
9 evidence to dismiss—the Multnomah County District Attorney’s office finally dismissed all
10 criminal charges against Plaintiff.
11

12
13 68.

14 On May 21, 2018, Defendant Leineweber gave an interview to the Portland Tribune,
15 wherein he stated the following defamatory statements:
16

- 17 a) “Based on the available information at the time of the
18 indictment, there was ample probable cause to support
19 arresting Mrs. Rubin. However, the new information given
20 to the district attorney's office in the months following the
21 indictment has made proving the case beyond a reasonable
22 doubt untenable.”
23
24 b) “During the relevant time period, the Rubins had money
25 coming in to their accounts, but due to the disorganized
26 nature of the financial records, it was difficult to attribute
27 that money as a certain type of income for purposes of
28 government benefits.”
c) “Further complicating the issue was that the Rubins had a
casualty loss (house fire) in the early 2000s that they were
using to achieve a modified adjusted gross income of
nearly \$0 during the time period in question. None of that
information was known to the district attorney's office at
the time the case was taken to grand jury.”

69.

On or about June 22, 2018, Defendant DHS's Office of Payment Accuracy and Recovery sent Plaintiff a billing statement for \$73,280.43 in "overpayments", based on:

- a) \$13,526.00 in "overpayments" for TANF;
- b) \$27,880.40 in "overpayments" for Medicaid; and
- c) \$31,874.00 in "overpayments" for SNAP.

70.

On or about August 22, 2018, the Oregon Health Authority (OHA) contacted Plaintiff to inform her that OHA "decided that the entire Medicaid portion of the overpayment has been dismissed – and zeroed out. Thus, any Medicaid overpayment amount we stated you owed has been eliminated."

71.

That same day, Plaintiff was served with a Contested Case Notice IA3024 by Defendant Karen Ertel (Defendant Ertel), wherein Defendant DHS decided that Plaintiff and her family were "overpaid" the reduced amount of approximately \$46,000, which is represented in the following breakdown (note there is some overlap in categories below):

- a) \$29,185.00 in Supplemental Nutrition Assistance Program (SNAP) benefits from October 1, 2011 to October 31, 2016;
- b) \$8,536.00 in SNAP benefits from August 1, 2014 to May 31, 2015 (separately for Colescott Rubin, amount also included in point (a) above); and
- c) \$13,526.00 in Temporary Aid for Needy Families (TANF) benefits from October 12, 2011 to March 31, 2013.

72.

On or about February 4, 2019, Plaintiff, her attorney and her bookkeeper (Phyllis Shelton, The Bookkeeping Collaborative) met with DOJ Attorneys Ellen Mendoza (Defendant Mendoza), DHS Investigator Karen Ertel (Defendant Ertel) and DOJ attorney Elizabeth Grant to demonstrate in person that there was no reasonable basis supporting Defendant DHS's Contested Case No. IA3024 against Plaintiff.

73.

Among the numerous examples: 1) Plaintiff's attorney demonstrated that certain monies designated by DHS as "personal income" to the Rubins (via Kalanges' Analysis) were, in fact, well documented business expenses - for the rental of 2 climate-controlled public storage spaces (at Rose City Storage) on behalf of LSAF for the storage of tens of thousands of LeadCheck swab lead testing kits that were donated by 3M and distributed to families across the country for free; and (as a second example among many to choose from) 2) that monies that were provided to LSAF by a collaborative nonprofit partner organization (Concord Cooperative Preschool in New Hampshire – an entity that happened to be a childcare center) to help cover the costs of an LSAF sponsored event in New Hampshire hosted by New Hampshire's Department of Health and Human Services, were somehow erroneously designated by Oregon DHS (via Kalanges' Analysis) as "childcare costs" – asserted to have been received as a benefit to Plaintiff– presumably for childcare of Plaintiff's own children (who live in Oregon, not New Hampshire).

74.

On or about February 12, 2019, Plaintiff's attorney received Defendant DHS's Amended Contested Case No. IA3024, which claimed that Plaintiff and her family were now "overpaid" for the again reduced amount of approximately \$27,000.00, which is represented in the following

breakdown (note: there is some overlap in the categories below):

- a) \$20,018.00 in Supplemental Nutrition Assistance Program (SNAP) benefits from July 1, 2012 through May 31, 2015;
- b) \$5,623.00 in SNAP benefits from August 1, 2014 through May 31, 2015 (separately for Colescott Rubin, amount also included in point (a) above); and
- c) \$8,438.00 in Temporary Aid for Needy Families (TANF) benefits from April 1, 2012 through March 31, 2013.

75.

On or about February 19, 2019, Defendant DHS (via Defendant Ertel and Defendant Mendoza) submitted to the administrative law judge what can only be perceived as a totally new set of false allegations (74, above) demonstrating DHS has continued this pattern of acting in bad faith - as they apparently have again not carefully reviewed the transactions which will be disputed by the Plaintiff and her legal team on May 14, 2019 at the next scheduled hearing date.

76.

In spite of DOJ & DHS' allegations being repeatedly disproven by a careful review of the facts as evidenced by the following instances: 1) the September 12, 2017, IRS Audit conclusion; 2) the May 10, 2018, dismissal of all criminal charges; and 3) the August 22, 2018, dismissal of the approximately \$27,000 in Medical benefits overpayment allegation and 4) February 12, 2019 dismissal of the remaining approximately \$46,000 in overpayment allegations based on the calculus in the August 2018 contested case notice, DHS has continued to act in bad faith with the new allegation of approximately \$27,000 in overpayment (using new calculus) submitted to the administrative law judge on February 19, 2019.

1 77.

2 The alleged “facts” being used by DHS as “evidence” for the upcoming May 14, 2019,
3 hearing in combination with the past clear and demonstrable lack of DHS’ investigators’
4 independent review of actual facts and evidence, as demonstrated and supported by DHS’ newly
5 formulated allegations in the February 2019 contested case notice (and DOJ’s legal
6 representation and support of DHS’s actions in this matter), represents a continued ongoing
7 abuse of power as they (DOJ and DHS and the respective relevant Defendants) are apparently
8 “down to the wire” in needing to use fallacious logic to find some alleged infraction, no matter
9 how small - to help support their egregious misuse of public funds in persecuting Plaintiff and
10 causing extreme distress and hardship to her family over the past three years.
11

12 77.a.

13 In summary, Plaintiff and her family were below the poverty line during periods in
14 question, and were not guilty of the alleged financial impropriety, nor alleged criminal behavior,
15 nor alleged misuse of state benefits. The September 2017 conclusion of the IRS audit
16 unequivocally demonstrated this. The May 2018 conclusion of the criminal case demonstrated
17 this. The August 2018 DHS initial review and dismissal of the medical overpayments portion of
18 the DHS claim demonstrated this. The subsequent DHS review and February 2019 dismissal of
19 the false calculus behind remaining approximately \$46,000 portion of funds alleged due in
20 “overpayment” from the August 22, 2018 contested case notice demonstrated this. This will also
21 be demonstrated in the May 14, 2019 hearing for the new (February 2019) contested case notice,
22 now alleging approximately \$27,000 in “overpayment” using a new equally false calculus - that
23 again clearly demonstrates that DHS and their representatives have not done their job in
24 competently reviewing the documentation supporting Plaintiff’s innocence of these allegations.
25
26
27
28

1 All of these actions against Mrs. Rubin and her family have been unwarranted, and an
2 egregious misuse of public funds. Public agencies and their employees (the named Defendants)
3 spent substantial resources - and more than three years - pursuing a low-income family with
4 disabled children, forcing them back in to poverty at a critical juncture in Mrs. Rubin's career, a
5 juncture when she had created unprecedented and significant momentum in her environmental
6 advocacy work, and had finally pulled her family out of poverty. The irony being that the
7 persistent and wholly false accusations as noted in this complaint were directly causal in pushing
8 the Rubins back into poverty, and required them to go back on public assistance in January of
9 2017 (medical benefits for their family) and into significant debt to defend their innocence in
10 these matters. In engaging in this de facto persecution of Mrs. Rubin and her family, these public
11 agencies and their employees caused even greater expense to the State by returning the Rubin
12 family to poverty. Said another way, just prior to this unwarranted campaign of perpetual
13 investigations into Mrs. Rubin, her family, and her lead poisoning prevention advocacy work,
14 her family had finally managed to get off of Food Stamps, procure private health insurance, and
15 proudly lift their family out of dependence on public assistance.

16
17
18
19
20 **FIRST CLAIM FOR RELIEF**
21 **42 U.S.C. § 1983**
22 **First Amendment Violation**
23 **(Against all Defendants)**

24 78.

25 Plaintiff incorporates paragraphs 1 through 77 as if fully set forth herein.

1 79.

2 Under the Oregon Constitution, Article I, Section 8, every person shall be responsible for
3 the abuse of the right to free speech. Plaintiff was exercising her constitutional right to freedom
4 of speech by advocating for childhood lead poisoning prevention, a matter of public concern and
5 national debate.
6

7 80.

8 Oregon Constitution, Article I, Section 26, prevents restraint of inhabitants from the State
9 from assembling together in a peaceable manner to consult for their common good. Plaintiff was
10 exercising her constitutional right of assembly by tweeting, blogging on the Internet—which
11 constitutes a place of assembly in the modern world of social media—and speaking in person
12 about a matter of public concern and national debate.
13

14 81.

15 Defendants prompted, initiated and instituted an IRS Audit, DOJ Investigation, criminal
16 charges, and a DHS Contested Case against Plaintiff in retaliation for, and to further abridge,
17 Plaintiff exercising her constitutional right to freedom of speech by advocating for childhood
18 lead poisoning prevention, a matter of public concern and national debate.
19

20 82.

21 The tax audit, criminal charges and contested case were all prompted, initiated and
22 instituted by Defendants to silence Plaintiff. Defendants abridged Plaintiff's right to freedom of
23 speech and association. Defendants' acts violated Plaintiff's rights under the First Amendment of
24 the United States Constitution, made applicable to the State of Oregon through the Fourteenth
25 Amendment.
26
27
28

1
2 83.

3 The acts of defendants described herein were taken under color of state law.
4

5 84.

6 As a direct and proximate result of Defendants' unlawful acts, Plaintiff has suffered harm
7 to her reputation, the loss of the non-profit she founded, the loss of past and future consulting
8 income, the loss of past and future appearance opportunities, the loss of funding for her
9 documentary, and the loss of funding for her book, all in amounts to be determined by the jury at
10 trial.
11

12 85.

13 As a direct and proximate result of Defendants' unlawful acts, Plaintiff and her family
14 have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult,
15 all in amounts to be determined by the jury at trial.
16

17 ///

18 86.

19 As a direct and proximate result of Defendants' unlawful acts, Plaintiff is entitled to
20 recover all of her legal fees and bookkeeping fees incurred in defending herself against the IRS
21 audit, the criminal charge levied by the Multnomah County District Attorney, DOJ Investigation,
22 and DHS's Contested Case, all in amounts to be determined by a jury at trial.
23

24 87.

25 Defendants' conduct toward Plaintiff demonstrated a wanton, reckless or callous
26 indifference to Plaintiff's constitutional rights, which warrants an imposition of punitive
27 damages in such amounts as the jury may deem appropriate to deter future violations.
28

SECOND CLAIM FOR RELIEF
42 U.S.C. § 1983
Fourth Amendment Violations
(As to Defendant Multnomah County Sheriff's Office
And Defendant Kalanges)

88.

Plaintiff incorporates paragraphs 1 through 87 as if fully set forth herein.

89.

Under the Oregon Constitution, Article I, Section 9, no one "shall violate the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search, or seizure."

90.

Under the Oregon Constitution, Article I, Section 9, "no warrant shall issue but upon probable cause, supported by oath, or affirmation, and particularly describing the place to be searched, and the person or thing to be seized."

////

91.

Plaintiff's arrest was based on Defendant Kalanges's unsubstantiated and misleading Analysis. Details of which he conveyed as part of his oath or affirmation in support of the arrest warrant issued for Plaintiff's November 28, 2018, arrest.

92.

Defendant Kalanges was aware that his Analysis was unsubstantiated and misleading based on the IRS Audit prior to either making statements in support of a warrant for Plaintiff's arrest or testifying before the grand jury on Plaintiff's indictment.

1
2 93.

3 Defendant Kalanges was aware that his Analysis was insufficient probable cause to either
4 support an arrest warrant or to justify arresting Plaintiff without a warrant.
5

6 94.

7 The acts of Defendants described herein were taken under color of state law.

8 95.

9 As a direct and proximate result of Defendants' unlawful acts, Plaintiff had to spend a
10 day in jail.
11

12 96.

13 As a direct and proximate result of Defendants' unlawful acts, Plaintiff and her family
14 have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult,
15 all in amounts to be determined by the jury at trial.
16

17 97.

18 As a direct and proximate result of Defendants' unlawful acts, Plaintiff has suffered harm
19 to her reputation, the loss of the non-profit she founded, the loss of past and future appearance
20 opportunities, the loss of funding for her documentary, and the loss of funding for her book, all
21 in amounts to be determined by the jury at trial.
22

23 98.

24 As a direct and proximate result of Defendants' unlawful acts, Plaintiff is entitled to
25 recover all of her legal fees in defending herself against the criminal charges in Multnomah
26 County Case No. 17CR75385, all in amounts to be determined by a jury at trial.
27
28

1 99.

2 Defendants' conduct toward Plaintiff demonstrated a wanton, reckless or callous
3 indifference to Plaintiff's constitutional rights, which warrants an imposition of punitive
4 damages in such amounts as the jury may deem appropriate to deter future violations.
5

6 **THIRD CLAIM FOR RELIEF**
7 **42 U.S.C. § 1983**
8 **Fourteenth Amendment Violations**
9 **Due Process Violation**
(As to Defendants DOJ, DHS, Kalanges and Glenn)

10 100.

11 Plaintiff incorporates paragraphs 1 through 97 as if fully set forth herein.

12 101.

13 Under the U.S. Constitution, Amend. XIV, Section 1, "[n]o State shall... deprive any
14 person of life, liberty, or property, without due process of law"
15

16 102.

17 The information and documentation emanating from the IRS Audit and provided to
18 Defendant Kalanges, informing him that his Analysis was unsubstantiated and misleading was
19 exculpatory evidence.
20

21 103.

22 Defendant DOJ, DHS, Kalanges and Glenn had a duty to provide that exculpatory
23 evidence to the District Attorney's office.
24

25 104.

26 This failure deprived Plaintiff of her Fourteenth Amendment right to procedural due
27 process.
28

105.

Defendants also deprived Plaintiff of substantive due process by arbitrary and capricious government action which was not rationally related to a legitimate government interest and/or was by government action in fact motivated by bias, bad faith or improper purpose. Plaintiff's liberty rights include deprivation of her reputation and her right to be free from a government official interfering with her contractual relationships, thereby violating Plaintiff's right to due process under the Fourteenth Amendment of the United States Constitution.

106.

Defendants damaged Plaintiff's standing within the community and/or imposed a stigma on her as an "embezzler" that negatively affected her ability to earn income as a consultant.

107.

The acts of Defendants described herein were taken under color of state law.

108.

As a direct and proximate result of Defendants' unlawful acts, Plaintiff had to spend a day in jail.

109.

As a direct and proximate result of Defendants' unlawful acts, Plaintiff and her family have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult, all in amounts to be determined by the jury at trial.

110.

As a direct and proximate result of Defendants' unlawful acts, Plaintiff has suffered harm to her reputation, the loss of the non-profit she founded, the loss of past and future appearance opportunities, the loss of funding for her documentary, and the loss of funding for her book, all in amounts to be determined by the jury at trial.

111.

As a direct and proximate result of Defendants' unlawful acts, Plaintiff is entitled to recover all of her legal fees in defending herself against the criminal charges in Multnomah County Case No. 17CR75385, in amounts to be determined by a jury at trial.

112.

Defendants' conduct toward Plaintiff demonstrated a wanton, reckless or callous indifference to Plaintiff's constitutional rights, which warrants an imposition of punitive damages in such amounts as the jury may deem appropriate to deter future violations..

FOURTH CLAIM FOR RELIEF

Malicious Prosecution

(As to Defendants DOJ, DHS, Kalanges, Glenn, Multnomah County District Attorneys Office and Leineweber)

113.

Plaintiff incorporates paragraphs 1 through 112 as if fully set forth herein.

114.

Defendants began and continued a criminal proceeding based on Defendant Kalanges's unsubstantiated and misleading Analysis.

1
2 115.

3 Defendants lacked reasonable grounds to believe the allegations of the proceedings they
4 began and continued based on Defendant Kalanges unsubstantiated and misleading Analysis.
5

6 116.

7 Defendant Kalanges was aware that his Analysis was insufficient probable cause to
8 support the Indictment in Multnomah County Case No. 17CR75385.
9

10 117.

11 Despite being made aware of the unsubstantiated and misleading nature of Defendant
12 Kalanges's Analysis, and the discovery that Defendant DOJ, DHS, Kalanges and Glenn
13 withheld exculpatory evidence, Defendant Multnomah County District Attorneys Office and
14 Defendant Leineweber continued the prosecution of Plaintiff for three more months.
15

16 118.

17 All nine (9) felonies filed against Plaintiff in Multnomah County Case No. 17CR75385
18 were dismissed in Plaintiff's favor.
19

20 119.

21 Defendants initiated and continued the criminal proceedings in Multnomah County Case
22 No. 17CR75385 with the purpose of 1) silencing Plaintiff's advocacy on behalf of children
23 potentially exposed to lead poisoning, and 2) covering up the fact that their efforts were based on
24 Defendant Kalanges's unsubstantiated and misleading Analysis.
25

26 120.

27 As a direct and proximate result of Defendants' unlawful acts, Plaintiff had to spend a
28 day in jail.

121.

As a direct and proximate result of Defendants' unlawful acts, Plaintiff and her family have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult, all in amounts to be determined by the jury at trial.

122.

As a direct and proximate result of Defendants' unlawful acts, Plaintiff has suffered harm to her reputation, the loss of the non-profit she founded, the loss of past and future appearance opportunities, the loss of funding for her documentary, and the loss of funding for her book, all in amounts to be determined by the jury at trial.

123.

As a direct and proximate result of Defendants' unlawful acts, Plaintiff is entitled to recover all of her legal fees in defending herself against the criminal charges in Multnomah County Case No. 17CR75385, in amounts to be determined by a jury at trial.

FIFTH CLAIM FOR RELIEF
Abuse of Process
(As to all Defendants)

124.

Plaintiff incorporates paragraphs 1 through 123 as if fully set forth herein.

125.

Defendants initiated, commenced or continued the IRS audit, DOJ and DHS investigations, criminal prosecution and DHS administrative process with the intention of 1) silencing Plaintiff's advocacy on behalf of children potentially exposed to lead poisoning, and 2) covering up the fact that their proceedings were based on Defendant Kalanges's false

1 and unsubstantiated Analysis, rather than trying to discover the truth or recoup monies from
2 Plaintiff.

3
4 126.

5 As a direct and proximate result of Defendants' unlawful acts, Plaintiff has suffered harm
6 to her reputation, the loss of the non-profit she founded, the loss of past and future appearance
7 opportunities, the loss of funding for her documentary, and the loss of funding for her book, all
8 in amounts to be determined by the jury at trial.

9
10 127.

11 As a direct and proximate result of Defendants' unlawful acts, Plaintiff and her family
12 have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury and insult,
13 all in amounts to be determined by the jury at trial.

14
15 128.

16 As a direct and proximate result of Defendants' unlawful acts, Plaintiff is entitled to
17 recover all of her legal fees and bookkeeping fees incurred in defending herself against the IRS
18 audit, the criminal charge levied by the Multnomah County District Attorney, the DOJ and DHS
19 Investigations and DHS's Contested Case, all in amounts to be determined by a jury at trial.

20
21 **SIXTH CLAIM FOR RELIEF**
22 **Intentional Infliction of Emotional Distress**
23 **(As to all Defendants)**

24
25 129.

26 Plaintiff incorporates paragraphs 1 through 128 as if fully set forth herein.

27
28 130.

Defendants' intentionally or recklessly acted in violation of Plaintiff's rights.

1 131.

2 Defendants' conduct was extreme and outrageous.

3 132.

4 As a direct and proximate cause of Defendants' conduct, Plaintiff and her family suffered
5 severe emotional distress, in an amount to be determined at trial.
6

7
8 **SEVENTH CLAIM FOR RELIEF**
9 **Defamation**
10 **(As to Defendant Leineweber)**

11 133.

12 Plaintiff incorporates paragraphs 1 through 132 as if fully set forth herein.

13 134.

14 After dismissing all charges against Plaintiff, Defendant Leineweber made false
15 statements to the *Portland Tribune* regarding Plaintiff.

16 135.

17 As a direct and proximate result of Defendant Leineweber's false statements, Plaintiff has
18 suffered harm to her reputation, the loss of past and future consulting, the loss of past and future
19 appearance opportunities, the loss of funding for her documentary, and the loss of funding for
20 her book, all in amounts to be determined by the jury at trial.
21

22 136.

23 As a direct and proximate result of Defendant Leineweber's false statements, Plaintiff and
24 her family have suffered outrage, betrayal, offense, indignity, embarrassment, humiliation, injury
25 and insult, all in amounts to be determined by the jury at trial.
26
27
28

1 **WHEREFORE**, Plaintiff prays for judgment against defendants as follows:

- 2 a) Economic damages in the form of lost past consulting income, consequential damages,
3 and prejudgment interest in the amount of \$1,215,000;
- 4 b) Economic damages in the form of lost future consulting income, consequential
5 damages, and prejudgment interest in the amount of \$2,400,000;
- 6 c) Reimbursement of all fees incurred in fighting the audit, investigations, criminal
7 charges, and contested case in an amount to be determined by the jury at trial;
- 8 d) Non-economic damages in the form of pain and suffering in the amount of
9 \$12,000,000 [this includes damages for each of the six members of Plaintiff's family,
10 including her four children who have been significantly harmed by the actions
11 outlined in this complaint];
- 12 e) All available equitable relief and damages in amounts to be determined at trial,
13 consistent with the claims above against defendants, including but not limited to;
- 14 i. Restraining Defendants from further targeting Plaintiff for her work as an
15 advocate or for her use of state benefits;
- 16 ii. DOJ divulging the name of person(s) who made the "anonymous"
17 complaint, Defendant Doe, sued herein;
- 18 iii. Removing Defendant Kalanges from his position with Defendant DOJ;
- 19 iv. Dismissing any and all proceedings and investigations being pursued
20 against Plaintiff and the Board of Directors for LSAF;
- 21 v. Dismissing any and all proceedings being pursued against Plaintiff by
22 Defendant DHS; and
- 23 vi. Public apologies from Defendants DOJ, DHS and Leineweber;
- 24
25
26
27
28

- 1 f) Punitive damages consistent with the claims above against Defendants in amounts to
2 be determined at trial;
3 g) Reasonable attorneys' fees and litigation expenses/costs herein, including expert
4 witness fees and expenses, consistent with the claims above against Defendants; and
5
6 h) Grant such other relief as is just and proper.

7 DATED this 8th day of May, 2019

8 /s/ Tamara Elise Rubin
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